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Fish and Wildlife Service

50 CFR Part 20

**Migratory Bird Hunting; Temporary
Approval of Tin Shot as Nontoxic for
Hunting Waterfowl and Coots During the
2000–2001 Season; Final Rule**

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN: 1018-AH67

Migratory Bird Hunting; Temporary Approval of Tin Shot as Nontoxic for Hunting Waterfowl and Coots During the 2000–2001 Season**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) amends 50 CFR 20.21(j) to grant temporary approval of tin shot as nontoxic for hunting waterfowl and coots during the 2000–2001 season only. Acute toxicity studies revealed no adverse effects over a 30-day period on mallards (*Anas platyrhynchos*) dosed with tin shot. Reproductive/chronic toxicity testing over a 150-day period indicated that tin administered to adult mallards did not adversely affect them or the offspring they produced. The tin shot application was submitted by the International Tin Research Institute, Ltd. (ITRI) of Uxbridge, Middlesex, England.

DATES: This rule takes effect on December 7, 2000.

ADDRESSES: Copies of the Environmental Assessment are available by writing to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Suite 634, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act)(16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

The purpose of this rule is to allow the hunting public to temporarily use tin shot for hunting waterfowl and coots during the 2000–2001 hunting season only. Accordingly, we amend 50 CFR 20.21, which describes illegal hunting

methods for migratory birds. Paragraph (j) of § 20.21 pertains to prohibited types of shot. We amend § 20.21(j) to allow temporary use of tin shot (99.9 percent tin, with <1 percent residual lead) as nontoxic shot for waterfowl and coot hunting during the 2000–2001 hunting season only.

Since the mid-1970s, we have sought to identify shot that does not pose a significant toxic hazard to migratory birds or other wildlife. Currently, only steel, bismuth-tin, tungsten-iron, tungsten-polymer, and tungsten-matrix shot are approved as nontoxic. We previously granted temporary approval for tin shot during the 1999–2000 hunting season (August 19, 1999; 64 FR 45400). Compliance with the use of nontoxic shot has increased over the last few years (Anderson *et al.* 2000). We believe that compliance will continue to increase with the approval and availability of other nontoxic shot types.

ITRI's candidate shot is made from commercially pure tin; no alloying or other alterations are intentionally made to the chemical composition of the shot. This shot material has a density of approximately 7.3 g/cm³, and is 99.9 percent tin, with a low level of iron pickup due to the steel production equipment. The tin shot application from ITRI contains a description of the shot, a toxicological report (Thomas 1997), results of a 30-day toxicity study (Wildlife International, Ltd. 1998), and results of a 150-day reproductive/chronic toxicity study (Gallagher *et al.* 2000). On August 19, 1999 (64 FR 45400) we published a detailed literature review on toxicity, environmental fate, and known effect of tin on birds, as well as results from ITRI's 30-day toxicity testing of tin shot. On September 25, 2000 (65 FR 57586) we published results from ITRI's reproductive/chronic toxicity study which revealed no adverse effects of tin shot on adult mallards, or the offspring they produced.

Nontoxic Shot Approval

The nontoxic shot approval process contains a tiered review system and outlines three conditions for approval of shot types. The first condition for nontoxic shot approval is toxicity testing. Based on the results of the toxicological report and the toxicity tests discussed above, we conclude that tin shot does not pose a significant danger to migratory birds or other wildlife.

The second condition for approval is testing for residual lead levels. Any shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. We have determined

that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent, and incorporated this requirement in the new approval process. ITRI has documented that tin shot meets this requirement.

The third condition for approval involves law enforcement. In the August 18, 1995, **Federal Register** (60 FR 43314), we indicated our position that a noninvasive field detection device to distinguish lead from other shot types was an important component of the nontoxic shot approval process. At that time, we stated that final approval of bismuth-tin shot would be contingent upon the development and availability of a noninvasive field detection device (60 FR 43315). We incorporated a requirement for a noninvasive field detection device in the revised nontoxic shot approval process published on December 1, 1997 (62 FR 63608); 50 CFR 20.134(b)(6). A field detection method to distinguish tin shot from lead currently is being developed by ITRI. Granting temporary approval for tin shot during the 2000–2001 hunting season will facilitate completion of development of such a device. However, we will not consider either additional temporary approvals, or final approval, of tin shot beyond the 2000–2001 season until a reliable and acceptable field detection method is developed and is readily available to law enforcement personnel.

As stated previously, this rule amends 50 CFR 20.21(j) by temporarily approving tin shot as nontoxic for hunting waterfowl and coots during the 2000–2001 hunting season only. It is based on the toxicological report, acute toxicity study, and the reproductive/chronic toxicity study submitted by ITRI. Results of these studies indicate the absence of any deleterious effects of tin shot when ingested by captive-reared mallards.

In the amendatory language of the proposed rule published on September 25, 2000 (65 FR 57588), we incorrectly stated the chemical composition of tungsten-iron shot as 55 parts tungsten and 45 parts iron. The correct composition is 40 parts tungsten and 60 parts iron.

Public Comments and Responses

The September 25, 2000, proposed rule published in the **Federal Register** (65 FR 57586) invited public comments from interested parties. We indicated that the public comment period had been shortened to 30 days to expedite the availability of tin shot to hunters during the current hunting season (65 FR 57587). The **DATES** section of the

proposed rule incorrectly stated that public comments should be submitted no later than November 24, 2000, instead of October 24, 2000. On October 23, 2000, we published a notice in the **Federal Register** to correct the closing date for comments (65 FR 63225). We received three comments during the comment period.

ITRI expressed their appreciation for extension of temporary approval of tin shot, which will facilitate development of a field detection device. The Wisconsin Department of Natural Resources did not support granting temporary approval of tin shot at this time, due to the lack of a noninvasive field detection device to distinguish tin from lead shot. A private individual inquired whether or not ITRI manufactures tin shot, and whether the Service possessed any specific tin shot which it proposes to approve as nontoxic. The individual also opposed the approval of tin shot due to the low density of tin; which the individual believes will increase the incidence of crippling of waterfowl. Finally, the individual recommended that Service revise its nontoxic shot approval process to incorporate a lethality component.

Service Response: We understand the concern of wildlife agencies regarding the lack of a noninvasive field detection device. ITRI is currently developing such a device, and granting temporary approval of tin shot for an additional year will facilitate completion of such development. However, tin shot shells currently on the market clearly are labeled as such, which will aid in field detection. We reiterate that we will not consider either additional temporary approvals, or final approval, of tin shot beyond the 2000–2001 season until a reliable and acceptable field detection method is developed and is readily available to law enforcement personnel.

With regard to whether or not ITRI manufactures tin shot, there is no requirement for an applicant for nontoxic shot approval to physically manufacture the shot themselves. ITRI submitted a five pound sample of the candidate shot with its original application. Because tin shot is 99.9 percent tin, it is essentially a generic tin shot and its nontoxic characteristic is not dependent on the manufacturer. With regard to the ballistic performance of tin shot, the density of tin shot (approximately 7.3 g/cm³) is only slightly less than that of approved steel shot (7.9 g/cm³). Previously, we reviewed the ballistic performance of steel shot versus lead shot, and concluded that steel shot was suitable for hunting waterfowl (U.S. Fish and

Wildlife Service 1976, 1986). As with any shot type, we recommend that hunters restrict shooting to shorter distances to reduce crippling and maximize the number of waterfowl that are retrieved. We solicited public input on our proposed revision to the nontoxic shot approval process on January 26, 1996 (61 FR 2470). We received no public comments requesting that a lethality component be incorporated in the revised approval process. Finally, we note that tin shot has already been approved as nontoxic for hunting waterfowl in Canada.

References

- Anderson, W.L., S.P. Havera, and B.W. Zercher. 2000. Ingestion of lead and nontoxic shotgun pellets by ducks in the Mississippi Flyway. *J. Wildl. Manage.* 64:848–857.
- Gallagher, S.P., J.B. Beavers, R. Van Hoven, M. Jaber. 2000. Pure tin shot: A chronic exposure study with the mallard including reproductive parameters. Wildlife International, Ltd. Project No. 476–102. Easton, Maryland. 322pp.
- Thomas, V.G. 1997. Application for approval of tin shot as non-toxic for the hunting of migratory birds. 26 pp.
- U.S. Fish and Wildlife Service. 1976. Final Environmental Impact Statement: Proposed use of steel shot for hunting waterfowl in the United States. Department of the Interior. Washington, DC. 276pp.
- U.S. Fish and Wildlife Service. 1986. Final Supplemental Environmental Impact Statement: Use of lead shot for hunting migratory birds in the United States. Department of the Interior. Washington, DC. 549pp.
- Wildlife International, Ltd. 1998. Tin shot: An oral toxicity study with the mallard. Project No. 476–101. 158 pp.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared an Environmental Assessment (EA) for temporary approval of tin shot in October, 2000. Based on review and evaluation of the information contained in the EA, we have determined that amending 50 CFR 20.21(j) to provide temporary approval of tin shot as nontoxic for waterfowl and coot hunting during the 2000–01 season would not be a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Accordingly, the preparation of an Environmental Impact Statement on this action is not required. The EA is

available to the public at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall “insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *” We have completed a Section 7 consultation under the ESA for this rule. The result of our consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. This rule approves an additional type of nontoxic shot that may be sold and used to hunt migratory birds; this rule would provide one shot type in addition to the existing five that are approved. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others. This rule has not been reviewed by the Office of Management and Budget (OMB) review under Executive Order 12866.

Executive Order 12866

This rule is not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866. OMB makes the final determination under E.O. 12866. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the

SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no information collection requirements. However, we do have OMB approval (1018-0067; expires 10/31/2003) for information collection relating to what manufacturers of shot are required to provide to us for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform Act

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We, in promulgating this rule, have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, this regulation does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Effective Date

Under the APA (5 U.S.C. 551-553) our normal practice is to publish policies with a 30-day delay in effective date. But in this case, we are using the "good cause" exemption under 5 U.S.C. 553(d)(3) to make this policy effective upon publication for the following reasons: This rule relieves a restriction and, in addition, it is not in the public interest to delay the effective date of this rule. It is in the best interest of small retailers who have stocked tin shot for the current season. The Services believes another nontoxic shot option likely will improve hunter compliance, thereby reducing the amount of lead shot in the environment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, we amend part 20, subchapter B, chapter 1 of Title 50 of

the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703-712 and 16 U.S.C. 742 a-j.

2. Section 20.21 is amended by revising paragraph (j) introductory text and adding paragraph (j)(1) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron (40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11 with <1 percent residual lead) shot, or tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead) shot, or tin (99.9 percent tin with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that this restriction applies only to the taking of Anatidae (ducks, geese, (including brant) and swans), coots (*Fulica americana*) and any species that make up aggregate bag limits during concurrent seasons with the former in areas described in § 20.108 as nontoxic shot zones, and further provided that:

(1) Tin shot (99.9 percent tin with <1 percent residual lead) is legal as nontoxic shot for waterfowl and coot hunting for the 2000-2001 hunting season only.

(2) [Reserved]

Dated: November 24, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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